be maintained from it. He said this was not contradictory with the concept of a valid wakaf provided the corpus of the property was definitely and finally appropriated to the intended purpose, that is to the services of God. In any event once the wakaf is complete it cannot be challenged on the ground that it was not intended or not acted upon (*Verma's* at page 592). A settlor's right becomes extinguished immediately with his declaration and neither he nor anybody else can say that when he made the declaration he had no intention to create a valid dedication (*vide* Ameer Ali J. at page 434 (*supra*)). In any case even if there was any derogatory act on the part of the settlor this would merely show that he had acted in breach of the wakaf: it did not necessarily indicate he had no intention to create it in the first place.

It was true also, as pointed out by counsel, as indicative of the supposed lack of intention, that the registered proprietor of the land had always remained with the Dato Bentara Luar. But it cannot be denied also that the beneficial ownership of the land was with the beneficiaries of the defendants the moment the wakaf was declared which they are now entitled under section 5 of the 1911 Enactment to have it legally transferred to them. Indeed, as contended by counsel for the defendants it could not have been the intention of the Dato Bentara Luar to transfer the registered proprietorship to the beneficiaries as this would have defeated his intention to allow his descendants to derive profits and income only from it forever. During his life time he would be holding the land essentially as Mutawalli as the settlor may employ himself as such (see *Tyabji* page 607). The defendants had not chosen to apply to vest the land in them earlier because clearly their right to the land had not been disturbed by the plaintiffs. They are now compelled to do so because the plaintiffs are seeking to assert their title to the land.

I would therefore dismiss the plaintiffs' claim and give judgment to the defendants on their counterclaim and costs.

Claim dismissed.

Solicitors: *Thara Singh Sidhu; Hassan & Kong Yeam.*

PUBLIC PROSECUTOR v. BHANDULANANDA JAYATILAKE*

[O.Cr.J. (Ajaib Singh J.) July 17, 1981]

[Kuala Lumpur — Federal Territory Criminal Trial No. 10 of 1981]

Criminal Law and Procedure — Charge of giving false evidence — Plea of guilty — Sentence — Penal Code, ss. 193 & 194.

Penal Code, ss. 193 & 194 — False evidence — Plea of guilty — Sentence.

In this case the accused pleaded guilty on a charge of giving false evidence. He had made false statements while giving evidence under oath in a murder trial.

Held: although the accused was a first offender and had pleaded guilty, the offence of judicial perjury which the accused had committed is of such grave nature involving the risk of human life that public interest must outweigh the plea of mitigation which had been advanced on behalf of the accused. A stiff and deterrent sentence should be imposed and the accused should be sentenced to ten years' imprisonment.

CRIMINAL TRIAL.

Shaikh Daud bin Haji Mohamed Ismail (Deputy Public Prosecutor) for the prosecution.

Y. Sivaloganathan for the accused.

Cur. Adv. Vult.

Ajaib Singh J.: The accused in this case has pleaded guilty on a charge of giving false evidence and stands convicted under section 194 of the Penal Code. He had made false statements while giving evidence on oath in the murder trial of Karthigesu in the High Court on July 18, 1980. The prosecution case against Karthigesu rested mainly on circumstantial evidence and the false statements of the accused provided the main link which implicated Karthigesu in the murder of Philomena Jean Perera.

At the end of the trial on August 1, 1980 Karthigesu was found guilty of murder and sentenced to death. When his appeal came up before the Federal Court on May 28, 1981 Karthigesu successfully sought leave to adduce fresh evidence. The fresh evidence was to come from the accused. And it was while giving fresh evidence that the accused said that he had told lies when he implicated Karthigesu in the High Court trial. He said that he was asked to make the false statements by the deceased's mother and brother and by a police officer and he said that he agreed to lie in court because he was then under mental stress and had begun to drink heavily after having lost a son in January 1978. After listening to arguments from both sides the Federal Court allowed Karthigesu's appeal on May 29, 1981 and set aside the sentence of death.

Under section 193 of the Penal Code the intentional giving of false evidence in any stage of a judicial proceeding is punishable with imprisonment which may extend to seven years. The accused in this case is not charged under this section but under section 194 which covers a much more serious form of perjury. It is provided in this latter section that any person

* The accused's appeal to the Federal Court was dismissed on September 23, 1981. The judgment of the Federal Court will be reported in due course.

who gives false evidence intending thereby to cause any person to be convicted of a capital offence under the Penal Code is liable to punishment with imprisonment which may extend to twenty years. And it is provided further in the section that if an innocent person is convicted and executed in consequence of the false evidence the person who gives such false evidence shall be punished with death or imprisonment.

The gravamen of the offence of giving false evidence under section 193 or under section 194 is the intentional making of a false statement by a person who is under legal obligation to speak the truth. Whether the false evidence is material or immaterial is altogether irrelevant and has no bearing on the guilt or innocence of an accused person. The question of materiality arises only when the court considers the sentence which is to be passed on the accused. In fixing the sentence the court will therefore take into consideration the nature of the false evidence, the gravity of the case in which the false evidence was given, the extent of the influence on the court which was intended by that evidence and the circumstances under which the false statement was made. Thus a person who goes into the witness-box and tells lies to save his own skin in a cause or matter which is relatively minor is likely to be treated less severely than the person who falsely implicates another on some serious charge.

Witnesses giving evidence in court must never underrate the importance of speaking the truth. A court of justice is the sanctuary of truth where serious issues of law and fact are heard and determined. The law prescribes that witnesses on oath must tell the truth, the whole truth and nothing but the truth. True testimony alone will assist the court in arriving at a true verdict. It is most important therefore that people who appear as witnesses in court should never deviate from the truth for otherwise they would be polluting the administration of justice and thus committing a serious wrong to the court and to society. The obligation imposed on a witness to speak the truth under oath has the sanction of law. And very likely of religion as well. An oath which a witness takes in court is a solemn declaration by which the witness may well be invoking the wrath and vengeance of God in addition to any punishment which may be inflicted on him under the laws of the land if he does not speak the truth.

In his plea in mitigation of sentence Mr. Sivaloganathan urged the court to take a lenient view of this case on the ground that the accused is a first offender, has a wife and three children to support on a monthly salary of $1,200 as a sales manager in a printing firm and that he comes from a respectable family. Also that he was coached to give false evidence by Mable Perera and Brian Perera, the mother and brother respectively of the late Jean Perera, and by A.S.P. Shingara Singh who recorded a statement from the accused in the course of police investigations following the murder of Jean Perera. Mr. Sivaloganathan said that the accused agreed to give false evidence as coached because at that time he was under great emotional stress. He has found the courage to come forward and tell the whole country of his great sin and has thereby possibly saved a human life. In these circumstances Mr. Sivaloganathan submitted that public interest and justice would well be served if the accused is not sent to jail but released on a bond to be of good behaviour.

The accused is a first offender and by pleading guilty he has no doubt shown a measure of remorse on his part and thrown himself on the mercy of the court. Nevertheless the offence of judicial perjury which the accused has committed is of such a grave nature involving the risk of human life that public interest must outweigh the plea of mitigation which has been advanced on behalf of the accused. The evidence of the accused in the High Court was very material because it provided the main link in the largely circumstantial evidence which was adduced by the prosecution in the murder trial of Karthigesu. The accused was bound under oath to speak the truth. But he obviously had no intention whatsoever of respecting the sanctity of oath. Instead he deliberately perverted the cause of justice by deceiving and misleading the judge and jury with his false evidence.

The accused has made serious allegations against Mable Perera, Brian Perera and A.S.P. Shingara Singh saying that these three persons had coached him to give false evidence. It is not required of me in the present case to adjudicate on these allegations as it is not within the scope of these proceedings. Moreover I am in no position to comment on the allegations because I have not heard the other side of the story. This really is a matter for the Attorney-General to investigate. I can only say that this case has generated enough public interest and concern for the Attorney-General to come out with a statement and announce whatever decision he arrives at after due investigation.

Anyway the accused cannot be exonerated from his crime nor can the gravity of his offence be any lesser even if he was really coached to tell lies in court. His excuse that he was under emotional strain when he made the false statements cannot be accepted. He is no ignoramus. He is well educated and must be taken to be a man of responsibility having a wife and three children and a comfortable job. He must have known the damage which his false evidence was going to cause in the murder trial. His motive for giving false evidence cannot but be wicked and malicious in wanting to influence the judge and jury and getting Karthigesu convicted for murder. He now says that he has found the courage to come forward and tell the truth. He should then remain brave and take the consequences in his stride. By receiving punishment he will atone for his crime and find peace with himself and with his Maker.

In all the circumstances of this case I do not think that a binding-over order would be appropriate in view of the seriousness of the offence. I agree with the prosecution that public interest demands that a stiff and deterrent sentence be imposed. The accused is sentenced to ten years' imprisonment.

Order accordingly.

Solicitors: *S.M. Retnam.*